AUG 1 1945
CHARLES ELMORE CROPLEY
CLERK

The Supreme Court of the United States

OCTOBER TERM, 1945

No. 288

WILLIAM E. BAKER and MARTHA D. BAKER,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

ARTHUR S. DAYTON,
Security Building
Charleston 1, West Virginia
Attorney for Petitioners

CHARLESTON PRINTING COMPANY, CHARLESTON, WEST VIRGINIA

SUBJECT INDEX

	PAGE
Petition for writ of certiorari	3
Record and Opinions below	4
Jurisdiction	4
Statute involved	4
Questions presented	6
Reasons relied on for allowance of the writ	7
Prayer	8
Brief in support of petition for writ of certiorari	9
Statement	9
Summary of argument	9
Argument	10
Conclusion	27

TABLE OF CITATIONS

Judicial Opinions:

Booth v. United States, 291 U. S. 339, 78 L. ed. 386 ..... 7, 21

Evans v. Gore, 253 U. S. 245, 64 L. ed. 887 ..... 7, 11, 12, 13, 14, 17, 18, 22, 23, 24, 25, 26, 27

Miles v. Graham, 268 U. S. 501, 69 L. ed. 1067 ..... 13, 14, 18, 22, 23, 25

O'Malley v. Woodrough, 307 U. S. 277, 83 L. ed. 1289 ..... 13, 20, 21, 22, 23, 24, 25, 26

Constitutions and Statutes:

Constitution of the United States, Art. III, Sec. 1 ..... 6, 10, 11, 17, 25

Public Salary Tax Act, Section 3 ..... 16, 25

Public Salary Tax Act, Sec. 22(a) 4, 5, 7, 25

Public Salary Tax Act, Sec. 209 17

Revenue Act of 1918, Sec. 213 ..... 10, 12, 13

Revenue Act of 1921 ..... 11, 12, 13, 18, 19, 21, 23, 24

Revenue Act of 1921, Sec. 1400(a) 11, 12

Revenue Act of 1921, Sec. 213 13

Revenue Act of 1924, Sec. 213 13

Revenue Act of 1926 13

Revenue Act of 1928 ..... 14, 15, 18

Revenue Act of 1928, Sec. 22 13

Revenue Act of 1932 ..... 10, 15, 16, 18, 22, 24, 26

Revenue Act of 1932, Sec. 22 ..... 15, 27

Revenue Act of 1932, Sec. 22(a) 15

Revenue Act of 1934, Sec. 22(a) 15

Revenue Act of 1936, Sec. 22(a) 15

Revenue Act of 1938, Sec. 22(a) 15

Revenue Code of 1939, Vol. 53, Part 1 15

United States Internal Revenue Code, Sec. 22(a) 4

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.....

WILLIAM E. BAKER and MARTHA D. BAKER,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, William E. Baker and Martha D. Baker, respectfully pray that a writ of certiorari issue to review the final order and decision of the United States Circuit Court of Appeals for the Fourth Circuit, entered on the 10th day of May, 1945, affirming a decision of the Tax Court of the United States, entered on the 14th day of November, 1944, finding that there were deficiencies against these petitioners in income taxes in the respective principal amounts of $403.70, $516.07

and $1,265.43, for the respective calendar years 1939, 1940 and 1941. An order has been entered staying the mandate pending this application.

RECORD AND OPINIONS BELOW

There is presented with this petition a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed. Included in such transcript is the printed record, consisting of appendix to the brief of petitioners filed in the Circuit Court of Appeals, and references to the record hereinafter set forth are to the pages of such printed record. There is filed with this petition stipulation of counsel for petitioners and respondent that subject to the approval of the Court such appendix and proceedings in the Circuit Court of Appeals may constitute the printed record upon this petition. The decision and opinion of the Tax Court (the latter being reported as 4 T. C. No. 39) appear on pages 3 to 13 of the printed record; the stipulation of facts appears in the printed record on pages 14 to 16; the opinion and decision of the Circuit Court of Appeals (the opinion being not yet officially reported) appear in the transcript of the record.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (Chap. 229, 43 Stat. 936, 28 U.S.C.A. 347).

STATUTE INVOLVED

The issue here involved concerns the constitutionality of Section 22(a) of the United States Internal

Revenue Code, as amended by the Act approved April 12, 1939, commonly called the Public Salary Tax Act, in so far as it purports to tax the salary of a United States District Judge appointed prior to June 6, 1932, said Section 22(a) reading as follows, (the pertinent amendment thereto by said Public Salary Tax Act being the last sentence thereof, here set forth in italics), that is to say:

> "(a) 'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly. *In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income.*"

STATEMENT OF THE MATTER INVOLVED

Neither in departmental nor judicial procedure below is any procedural question, or factual issue, pre-

sented. All facts are stipulated. (Printed Record, pp. 14, 16).

The petitioner, William E. Baker, was duly appointed and qualified as United States District Judge for the Northern District of West Virginia on April 3, 1921, continuing at all times since in that capacity. Upon his personal income tax return (jointly made with Martha D. Baker, his wife) he set forth the fact that he had received for each of the years 1939, 1940 and 1941, the official compensation of such judge in the annual amount of $10,000.00 but did not include such amount as gross taxable income, claiming that it was exempt for reasons hereinafter set forth. The respondent, Commissioner of Internal Revenue, included such amounts in gross income for the respective years and imposed deficiencies in tax; all of which deficiencies and the taxes in controversy are attributable to inclusion in gross taxable income of the official compensation so received. (Printed Record, p. 15). Upon assessment of the deficiencies, appeal was duly taken to the Tax Court which, by a divided membership, upheld the imposition of the tax. (Majority opinion, Printed Record, p. 4, dissenting opinion, Printed Record, p. 12). Appeal being taken to the Circuit Court of Appeals of the Fourth Circuit, the decision of the Tax Court was affirmed on May 10, 1945.

QUESTIONS PRESENTED

(1) Is the inclusion, as gross taxable income, of the salary of a District Judge, qualifying on April 3, 1921, a diminishment of the stated compensation of a Federal judge during his continuance in office in violation of Article III, Section 1 of the Constitution of the United States?

(2) Is Section 22(a) of the United States Internal Revenue Code, as amended by the Act approved April 12, 1939, commonly called the Public Salary Tax Act, in so far as it purports to tax the compensation of judges of Courts of the United States who took office on or before June 6, 1932, unconstitutional as violating the above Article and section of the Constitution?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

(1) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court, to-wit:

(a) It has decided that the salary of a United States District Judge may be subjected to tax under an income tax statute enacted after the appointment and qualification of such judge, such being inconsistent with the decision of this Court of *Evans* v. *Gore,* 253 U. S. 245.

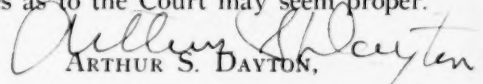
(b) It has decided, in conflict with the decision above cited of *Evans* v. *Gore,* that the imposition of an income tax upon official compensation of a United States District Judge does not constitute a diminution thereof, even though imposed by an Act passed subsequent to the appointment and qualification of such judge.

(c) It has decided that even though the salary of such judge during his continuance in office be freed of tax by Congressional repeal of the taxing statute, nevertheless a subsequent tax imposition is not a diminution thereof, such decision being in conflict with *Booth* v. *United States,* 291 U. S. 339.

(2) The Circuit Court of Appeals has decided a matter of great public interest and importance involving the status under Income Tax Law of the official compensation of all Federal judges of constitutional courts appointed prior to June 6, 1932, and such decision should be reviewed by this Court.

PRAYER

WHEREFORE, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals of the Fourth Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of case numbered on its Docket No. 5358, and entitled William E. Baker and Martha D. Baker, Petitioners, v. Commissioner of Internal Revenue, Respondent, and that the judgment of the Circuit Court of Appeals for the Fourth Circuit entered on May 10, 1945, may be reversed, and the decision of the Tax Court of the United States entered on November 14, 1944, may be reversed, and these petitioners held not liable for the taxes in question, and that these petitioners may have such other and further relief in the premises as to the Court may seem proper.



ARTHUR S. DAYTON,
Attorney for Petitioners
Address: Security Building
Charleston, West Virginia